

EXHIBIT C

1 ROBBINS ARROYO LLP
 2 BRIAN J. ROBBINS (190264)
 3 STEPHEN J. ODDO (174828)
 4 ERIC M. CARRINO (310765)
 5 600 B Street, Suite 1900
 6 San Diego, CA 92101
 Telephone: (619) 525-3990
 Facsimile: (619) 525-3991
 E-mail: brobbins@robbinsarroyo.com
 soddo@robbinsarroyo.com
 ecarrino@robbinsarroyo.com

7 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF SAN MATEO

10 DAVID OCONER, Individually and on Behalf)
 11 of All Others Similarly Situated,)

12 Plaintiff,)

13 v.)

14 RIPPLE LABS, INC.,)
 15 XRP II, LLC,)
 BRADLEY GARLINGHOUSE, and)
 DOES 1-25, Inclusive,)

16 Defendants.)

Case No.

18CIV03332

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF
 CALIFORNIA LAW

DEMAND FOR JURY TRIAL

18 - CIV - 03332
 CMP
 Complaint
 1232943



FILE BY FAX

1 Plaintiff David Oconer, individually and on behalf of all others similarly situated, by his
 2 undersigned attorneys, alleges the following, based upon personal knowledge as to plaintiff and
 3 plaintiff's own acts, and upon information and belief as to all other matters based on the investigation
 4 conducted by and through plaintiff's attorneys, which included, among other things, a review of filings
 5 and press releases by Ripple Labs, Inc. ("Ripple" or the "Company"), its wholly owned subsidiary XRP
 6 II, LLC ("XRP II"), and analyst and media reports and other publicly disclosed reports and information
 7 about the Company and XRP II. Plaintiff believes that substantial additional evidentiary support will
 8 exist for the allegations set forth herein, after a reasonable opportunity for discovery.

9 SUMMARY OF ACTION

10 1. This is a securities class action on behalf of all California purchasers of Ripple tokens
 11 ("XRP"), brought against Ripple, XRP II and the Chief Executive Officer ("CEO") of the Company,
 12 Bradley Garlinghouse ("Garlinghouse"), who promoted, sold and solicited the sale of XRP. Defendants
 13 raised hundreds of millions of dollars through the unregistered sale of XRP, including selling to retail
 14 investors, in violation of the law.

15 2. Under California law, offers and sales of securities must be qualified with the
 16 Commissioner of Corporations, unless exempt. These laws are designed to protect the public, by
 17 requiring various disclosures so that investors can better understand the security and the risks associated
 18 with investing in that security. The regime of registration and disclosure is the primary means by which
 19 regulators prohibit deceit, misrepresentations, and fraud in the sale of securities, and promote the fair
 20 and orderly functioning of the securities markets.

21 3. Here, the XRP offered and sold by defendants had all the traditional hallmarks of a
 22 security, yet defendants failed to register them as such. The purchase of XRP constitutes an investment
 23 contract, as XRP purchasers, including plaintiff, provided consideration (in the form of fiat, such as
 24 U.S. dollars, or other cryptocurrencies) in exchange for XRP. XRP purchasers reasonably expected to
 25 derive profits from their ownership of XRP, and defendants themselves have frequently highlighted this
 26 profit motive. Moreover, the development of the XRP Ledger and other facets of the XRP network, and
 27 the return that investors expected to derive therefrom, were, and are, based entirely on the technical,
 28 managerial, and entrepreneurial efforts of defendants, and other third parties employed by defendants.

1 Indeed, a feature of XRP that differentiates the cryptocurrency from others such as Bitcoin, is that the
2 security is highly centralized in Ripple. The Company created the XRP token and then used sales of the
3 tokens in order to fund its operations and the development of the XRP ecosystem, which in turn,
4 increased the value of XRP and the potential returns to XRP investors.

5 4. Despite the status of XRP as a security, defendants failed to register XRP and the sale of
6 XRP did not qualify for an exemption from registration. Nevertheless, many of the representations
7 defendants made regarding XRP were designed to drive demand for XRP, allowing defendants to obtain
8 greater returns on their XRP sales. Defendants have since generated hundreds of millions of dollars in
9 gross proceeds by selling XRP to the general public, in what is essentially a series of initial coin
10 offerings ("ICO"). Much like the better-known term, initial public offering ("IPO"), in an ICO, digital
11 assets are sold to consumers in exchange for legal tender or cryptocurrencies (most often Bitcoin and
12 Ethereum). These tokens generally give the purchaser various rights on the blockchain network and
13 resemble the shares of a company sold to investors in an IPO. Unfortunately, ICOs have become a
14 magnet for unscrupulous practices and fraud.

15 5. Plaintiff brings this suit for declaratory relief that XRP is, in fact, a security under
16 applicable laws, and for damages, rescission and other relief as detailed herein.

17 JURISDICTION AND VENUE

18 6. The claims alleged herein arise under §§25110, 25503 and 25504 of the California
19 Corporations Code (the "Corporations Code"). Jurisdiction is conferred by Art. VI, §10 of the
20 California Constitution. Venue is proper pursuant to the California Code of Civil Procedure.

21 7. The violations of law complained of herein occurred in San Mateo County, including the
22 unlawful sale of unregistered securities into this County. In addition, defendants are located and/or
23 conduct business in this County, significant events that led to the sale of unregistered securities
24 occurred in this County, and documents and witnesses are located in this County, or can be found in this
25 County. For example, Ripple raised proceeds from, and is backed by venture capital firms, such as
26 Andreessen Horowitz, which is located in this County, has solicited and sold XRP to investors located
27 in this County, and is run by defendant Garlinghouse, who lives in this County.

8. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mail, interstate telephone communications and the facilities of the national securities markets.

PARTIES

9. Plaintiff David Oconer is a citizen of California, who purchased the XRP promoted and sold by defendants, which was not registered as a security by defendants and was not subject to any exemption from registration.

10. Defendant Ripple Labs, Inc. has its principal place of business in San Francisco, California. Ripple created and sold XRP, through XRP II, and solicited the purchases of XRP from plaintiff and the Class (defined herein) for its own benefit and the benefit of its executives and owners, such as defendant Garlinghouse.

11. Defendant XRP II, LLC has its principal place of business in San Francisco, California. XRP II sold XRP and solicited the purchases of XRP from plaintiff and the Class for its own benefit and the benefit of its parent, Ripple, and its executives and owners, such as defendant Garlinghouse.

12. Defendant Bradley Garlinghouse is the CEO of the Company. He lives in Atherton, California. Garlinghouse orchestrated the sale of XRP by Ripple and XRP II and solicited the purchases of XRP from plaintiff and the Class for his own benefit and the benefit of Ripple.

13. The true names and capacities of defendants sued herein under California Code of Civil Procedure §474 as Does 1 through 25, inclusive, are presently not known to plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by the Class.

SUBSTANTIVE ALLEGATIONS

Ripple Creates XRP

14. Ripple's primary business involves the operation of an open ledger protocol, payment, and exchange network. The native cryptocurrency for the Ripple system is the XRP token, which serves as both an investment in the Company (as sales of XRP are used to fund Company operations,

1 with the expectation that these investments will increase the tokens' value) and as a means of exchange
2 promoted by Ripple. The Ripple system is based around the XRP Ledger. The XRP Ledger consists of
3 many servers, called nodes, which accept and process transactions. Client applications sign and send
4 transactions to nodes, which then relay these candidate transactions throughout the network for
5 processing. Transactions are then verified and become part of the XRP Ledger history through a
6 consensus process. Every transaction in XRP must be made by and through the XRP Ledger, which is
7 maintained by defendants. In order to open an account on the XRP Ledger, a user is required by
8 defendants to maintain a minimum account balance of 20 XRP. Furthermore, each time a transaction in
9 XRP is made, defendants require a transaction cost from the transacting parties.¹

10 15. Unlike cryptocurrencies such as Bitcoin and Ethereum, which are mined by those
11 validating transactions on their networks, Ripple created the 100 billion XRP supply itself. Twenty
12 billion XRP, or 20% of the total XRP supply, were given to the individual founders of Ripple,² with the
13 remaining 80 billion being retained by the Company. As for the 80 billion XRP held by Ripple, the
14 Company periodically sells XRP from its supply and uses the proceeds from these sales to fund
15 Company operations and improve the XRP ecosystem. Ripple's founders and other Company insiders
16 have also enriched themselves with their personal XRP fortunes. In January 2018, Ripple co-founder
17 Chris Larsen was named one of the richest people in the United States, with an estimated net worth of
18 \$59.9 billion, primarily due to the increase in value of XRP and his personal ownership of billions of
19 XRP tokens and a significant ownership stake in the Company.³

20 16. Ripple has been criticized because of the centralized nature of its network for XRP,
21 especially when compared to the networks for other truly distributed cryptocurrencies such as Bitcoin.
22 Ripple demonstrated its control over the XRP ecosystem when, in 2015, it froze the balance of Ripple

23 ¹ The current minimum transaction cost is 0.00001 XRP, although this cost can be increased by
24 defendants. This feature of XRP transactions benefits defendants because it makes their stockpile of
XRP more valuable over time.

25 ² Chris Larsen and Jed McCaleb ("McCaleb") each received 9.5 billion XRP, with Arthur Britto
26 receiving 1 billion.

27 ³ [https://www.cnbc.com/2018/01/04/ripple-co-founder-is-now-richer-than-the-google-founders-on-](https://www.cnbc.com/2018/01/04/ripple-co-founder-is-now-richer-than-the-google-founders-on-paper.html)
28 [paper.html](https://www.cnbc.com/2018/01/04/ripple-co-founder-is-now-richer-than-the-google-founders-on-paper.html).

co-founder McCaleb following an internal dispute. The ability of Ripple to control the flow of XRP undermines any pretense that the security is not centralized in the Company. Similarly, in February 2018, a report by BitMEX Research stated that a test of the Ripple system revealed that all five public keys used to validate transactions came directly from Ripple, meaning that Ripple was "essentially in complete control of moving the ledger forward."⁴ The report concluded that Ripple's claims that the system was "distributed" could be misleading, as Ripple essentially controlled the XRP Ledger process. As the stewards of the XRP ecosystem, defendants' success in developing, promoting, and maintaining the XRP Ledger and other exchange infrastructure is directly related to the value of XRP. Furthermore, because Ripple maintains, controls and stewards the XRP Ledger, and because defendants have the ability to add conditions to transactions in XRP, and can unilaterally modify elements of the XRP ecosystem, each transaction in XRP involves a transaction directly with defendants.

Ripple Updates XRP

17. Ripple is constantly changing and seeking to improve the XRP network. These changes have decreased transaction times and improved system security, compatibility, use cases and other features of XRP. At the same time, Ripple has released new "white papers" touting these upgrades and proposed upgrades to the cryptocurrency and its exchange network. For example, Ripple released a white paper in February 2016 following a series of upgrades with the subtitle "The ROI of Using Ripple and XRP for Global Interbank Settlements."⁵ "ROI" stands for "return on investment," and the paper discussed at length the purported value of using XRP, compared to other systems.

18. One of the most significant changes to the XRP ecosystem occurred in the latter half of 2015. In May 2015, regulatory authorities in the United States fined Ripple and XRP II \$700,000 for "willfully" violating the Bank Secrecy Act by selling XRP without obtaining the required authorization. The failure to properly register as a money services business, or "MSB," exposed XRP for use by money launderers, criminals and other suspicious actors. As part of the settlement, defendants agreed to a number of remedial measures, including registration with FinCEN within 30 days of the agreement

⁴ *The Ripple Story*, BitMEX Research (Feb. 6, 2018), <https://blog.bitmex.com/the-ripple-story/>.

⁵ https://ripple.com/files/xrp_cost_model_paper.pdf.

1 and to secure customer identification information within 180 days of the agreement. In the subsequent
2 months, Ripple updated the XRP network and ecosystem to comply with the settlement agreement. In
3 October 2015, Ripple underwent a rebranding after which it purported to fulfill its obligations under the
4 settlement agreement.

5 19. Another key development occurred in May 2017, when Ripple announced that it would
6 limit distribution of the remaining 61.68 billion XRP owned by the Company, from its original 80
7 billion XRP allotment. Ripple stated that it would place 55 billion XRP into a cryptographically
8 secured escrow account, and only offer and sell limited amounts of XRP at defined intervals. The
9 Company established 55 contracts of 1 billion XRP that allowed it to sell up to 1 billion XRP per month,
10 with any unsold XRP returned to escrow for use in subsequent offerings. The Company stated that it
11 expected the distribution strategy "will result in a strengthening XRP exchange rate against other
12 currencies," and that Ripple's "self-interest is aligned with building and maintaining a healthy XRP
13 market."⁶ The fact that the vast amount of existing XRP resides in the control of defendants further
14 demonstrates the high degree of centralization and control defendants maintain over XRP, as they can
15 determine the supply of XRP, which will, in turn impact the price of the security.

16 20. Indeed, a primary motivation for limiting the available supply of XRP was to drive price
17 appreciation and allow defendants to maximize profits from XRP sales. The price of XRP increased
18 rapidly following the announcement of the escrow decision, increasing 1,159% during the second
19 quarter of 2017. Ripple's "Q2 2017 XRP Markets Report" listed the escrow announcement as
20 "instrumental in helping to drive XRP interest and volume," and noted the "market responded favorably
21 to the escrow" announcement.⁷

22
23
24
25
26 ⁶ <https://ripple.com/insights/ripple-to-place-55-billion-xrp-in-escrow-to-ensure-certainty-into-total-xrp-supply/>.

27 ⁷ <https://ripple.com/insights/q2-2017-xrp-markets-report/>.

21. On or about December 7, 2017, Ripple announced that it had followed through with its promise and placed "55 billion XRP in a cryptographically-secured escrow account to create certainty of XRP supply at any given time."⁸ The announcement stated:

By securing the lion's share of XRP in escrow, people can now mathematically verify the maximum supply that can enter the market. While Ripple has proved to be a responsible steward of XRP supply for almost five years – and has clearly demonstrated a tremendous track record of investing in and supporting the XRP ecosystem – this lockup eliminates any concern that Ripple could flood the market, which we've pointed out before is a scenario that would be bad for Ripple.⁹

22. The article contained a button to allow readers to share it on Twitter with the caption "Game changer for \$XRP! 55 billion XRP now in escrow."¹⁰ Ripple also promoted this article through its own tweet, which proclaimed: "55B \$XRP is now in escrow. Interested in what this means for \$XRP markets?"¹¹ Garlinghouse was even more enthusiastic, tweeting: "Boom! 55B \$XRP now in escrow. Good for supply predictability and trusted, healthy \$XRP markets. Glad to finally let this #cryptokitty out of the bag!"¹²

23. Ripple's public commitment to limit the supply of XRP had its intended effect. In the weeks that followed, the price of XRP rapidly increased, from approximately \$0.22 per token on December 7, 2017 to \$3.38 per token on January 7, 2018.¹³

Defendants Market XRP to Drive Demand and Increase Price

24. While publicly touting its xCurrent, xRapid and xVia enterprise solutions (collectively, "Enterprise Solutions"), Ripple's primary source of income is, and has been, the sale of XRP. Ripple

⁸ <https://ripple.com/insights/ripple-escrows-55-billion-xrp-for-supply-predictability/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ <https://twitter.com/Ripple/status/938933967956389889>.

¹² <https://twitter.com/bgarlinghouse/status/938933791145336832?lang=en>.

¹³ XRP would subsequently lose nearly all its value in just over three months, falling to a low of approximately \$0.48 per token on April 6, 2018.

1 generated over \$180 million in gross proceeds through XRP sales in 2017 alone.¹⁴ Defendants sell XRP
 2 on a wholesale basis to larger investors, and also sell significant quantities of XRP directly to retail
 3 investors on cryptocurrency exchanges. According to Ripple, in the first quarter of 2018, "market
 4 participants purchased \$16.6 million [of XRP] directly from XRP II," and XRP II also "sold \$151.1
 5 million worth of XRP" on exchanges.¹⁵

6 25. Given its reliance on sales of XRP, it is unsurprising that Ripple aggressively markets
 7 XRP to drive demand, increase the price of XRP, and, consequently, its own profits. For example,
 8 Ripple has an entire section of its website dedicated to providing advice on "How to Buy XRP." This
 9 section provides links to exchanges and instructions on "how to buy XRP" on those exchanges.¹⁶ It also
 10 has a section titled "Market Performance" which proclaims that Ripple is "committed to the long term
 11 health and stability of XRP markets."¹⁷

12 26. Ripple also regularly promotes the availability of XRP on exchanges. For example, on
 13 May 18, 2017, Ripple's Senior Vice-President for Business Development, Patrick Griffin, tweeted a link
 14 to the Kraken exchange with the caption: "Kraken Introduces New Fiat Pairs for XRP Trading! USD,
 15 JPY, CAD, EUR @Ripple."¹⁸

16 27. Similarly, on or about December 21, 2017, Ripple tweeted that XRP was now available
 17 on over 50 exchanges.¹⁹ That tweet linked to an article on Ripple's website which described XRP as
 18 "the fastest and most scalable [digital] asset on the market."²⁰ The article continued: "The market is
 19 taking notice of XRP's speed, reliability and scalability – which has strengthened the demand for XRP

20 ¹⁴ [https://www.cnbc.com/2018/01/24/ripple-sold-91-point-6-million-of-digital-currency-xrp-last-](https://www.cnbc.com/2018/01/24/ripple-sold-91-point-6-million-of-digital-currency-xrp-last-quarter.html)
 21 [quarter.html](https://www.cnbc.com/2018/01/24/ripple-sold-91-point-6-million-of-digital-currency-xrp-last-quarter.html).

22 ¹⁵ Q1 2018 XRP Markets Report, <https://ripple.com/insights/q1-2018-xrp-markets-report/>.

23 ¹⁶ XRP Buying Guide, <https://ripple.com/xrp/buy-xrp/>.

24 ¹⁷ Market Performance, <https://ripple.com/xrp/market-performance/>.

25 ¹⁸ @patgriffin9, <https://twitter.com/patgriffin9/status/865251321867231233>.

26 ¹⁹ @Ripple, <https://twitter.com/Ripple/status/943999526783905792>.

27 ²⁰ XRP Now Available on 50 Exchanges Worldwide, [https://ripple.com/insights/xrp-now-available-](https://ripple.com/insights/xrp-now-available-on-50-exchanges-worldwide/)
 28 [on-50-exchanges-worldwide/](https://ripple.com/insights/xrp-now-available-on-50-exchanges-worldwide/).

1 and where it's listed. In fact, we're proud to announce that XRP has gone from being listed on six
 2 exchanges earlier this year to more than 50 worldwide."²¹ The article also linked to a number of
 3 exchanges where XRP could be purchased, and stated that "XRP's long-term value is determined by its
 4 utility – including its ability to help financial institutions source liquidity for payments into and out of
 5 emerging markets."²²

6 28. Illustrative of defendants' attempts to promote the XRP ecosystem, in 2017, Ripple
 7 attempted to pay two of the top cryptocurrency exchanges, Gemini and Coinbase, to secure listing of
 8 XRP. Coinbase and Gemini provide some of the easiest ways for U.S. customers to buy crypto-assets
 9 with U.S. dollars. As a result, being listed on one of these exchanges tends to accelerate demand for,
 10 and thus, increase the price of, a crypto-asset. For example, when Coinbase listed Bitcoin Cash in
 11 December 2017, the price of Bitcoin Cash increased nearly three times its trading price relative to other
 12 exchanges.

13 29. Reportedly, Ripple offered to pay \$1 million to Gemini in the third quarter of 2017 if it
 14 would list XRP. Similarly, during preliminary talks with Coinbase in the fall of 2017, Ripple said it
 15 would be willing to lend the exchange more than \$100 million worth of XRP to start letting users trade
 16 the token. On November 29, 2017, Ripple posted a link to a change.org petition to "Get Ripple on
 17 Coinbase," with the caption: "The community is mobilizing! [thumbs up emoji]."²³ Ripple's Senior
 18 Vice President of Business Development also tweeted a link to the petition. According to *Bloomberg*:
 19 "By dangling money in front of exchanges, Ripple signaled that its future success hinges in part on
 20 getting XRP listed on the top trading venues."²⁴

21 30. In addition, Ripple hosts conferences to generate interest in XRP. For example, from
 22 October 16 to October 18, 2017, the Company hosted a conference named "Swell" in Toronto. Ripple

23 ²¹ *Id.*

24 ²² *Id.*

25 ²³ <https://twitter.com/ripple/status/935923310080045056?lang=en>

26 ²⁴ <https://www.bloomberg.com/news/articles/2018-04-04/ripple-is-said-to-struggle-to-buy-u-s-listing-for-popular-coin>

1 acknowledged that "[a]nticipation around the event spurred a meaningful spike in XRP, pushing it up
2 100 percent."²⁵

3 31. On December 21, 2017, CoinDesk, a subsidiary of Digital Currency Group, which has an
4 ownership interest in Ripple, published an article titled, "Ripple Price Passes Historic \$1 Milestone."²⁶
5 This was just one of many instances in which Ripple would promote price movements of XRP.

6 32. Ripple's promotion of XRP's price continued in December 2017, as the price of XRP
7 climbed over 1,000% in a single month. In one instance, Ripple's product manager of the XRP Ledger
8 and xRapid retweeted a tweet exclaiming: "Wow, XRP at all time high! Forget about bitcoin, *we're all*
9 *in on XRP!*"²⁷ This same manager later tweeted: "So glad I doubled down. Since I joined @Ripple,
10 \$XRP now at \$1.00 (up 17,141.37%)...."²⁸

11 33. Ripple's CEO, defendant Garlinghouse, has also been a vocal advocate for investing in
12 XRP. In a December 14, 2017 interview with BNN, when asked if he is "personally invested" in XRP
13 and was "taking profits" on that investment, Garlinghouse stated, "I'm long XRP, *I'm very, very long*
14 *XRP* as a percentage of my personal balance sheet."²⁹ He continued, stating that he is "not long some
15 of the other [digital] assets, because it is not clear to me what's the real utility, what problem are they
16 really solving."³⁰ He ended by reiterating, "if you're solving a real problem, if it's a scaled problem,
17 then I think you have a huge opportunity to continue to grow that."³¹ Later that same day, Garlinghouse
18
19
20

21 ²⁵ Q3 2017 XRP Markets Report, <https://ripple.com/xrp/q3-2017-xrp-markets-report/>.

22 ²⁶ Daniel Palmer, *Ripple Price Passes Historic \$1 Milestone*, CoinDesk (Dec. 21, 2017),
<https://www.coindesk.com/ripple-price-passes-historic-1-milestone/>.

23 ²⁷ @warpaul, https://twitter.com/yoshitaka_kitao/status/940785785925709829.

24 ²⁸ <https://twitter.com/warpaul/status/943766056710975490>.

25 ²⁹ Interview available at <https://twitter.com/jonerlichman/status/941354964227522561?lang=en>.

26 ³⁰ *Id.*

27 ³¹ *Id.*

1 tweeted: "Bloomberg welcomes \$XRP to @theterminal and gets it right – #2 market cap behind \$BTC
2 at ~\$80B!"³²

3 34. About a week later, on or about December 22, 2017, Garlinghouse tweeted an article
4 titled "Bitcoin Is So 2017 as Ripple Soars at Year End," with the caption "I'll let the headline speak for
5 itself. \$xrp."³³

6 35. Similarly, on or about January 17, 2018, Garlinghouse tweeted a link to a *CNBC* article
7 titled "Ripple is sitting on close to \$80 billion and could cash out hundreds of millions per month – but
8 it isn't," with the caption: "A good read on why fostering a healthy \$XRP ecosystem is a top priority at
9 @Ripple."³⁴

10 36. However, the reality was that Ripple was profiting by selling to investors from its
11 massive store of XRP. In 2017 alone, Ripple sold more than \$180 million worth of XRP. These sales
12 accelerated in the first quarter of 2018, reaching \$151.1 million in just three months.

13 **The Price of XRP Is Directly Tied to Ripple's Business and Operations**

14 37. The Company's primary source of revenue is the periodic sale of XRP to investors. The
15 price for XRP, in turn, is directly tied to the managerial skills and efforts of Ripple, XRP II,
16 Garlinghouse, and other third parties who they employ, or with whom they are associated. Ripple
17 regularly promotes its improvements to the XRP ecosystem, which are intended to increase demand for
18 XRP and thus potential returns for XRP investors. For example, in describing the reasons behind the
19 dramatic price appreciation of XRP during the fourth quarter of 2017, Ripple specifically cited as of
20 "particular importance," the Company's various business initiatives, including: (i) Ripple's partnership
21 with American Express/Santander; (ii) Ripple's activation of the previously discussed escrow of XRP to
22 limit periodic offers and distributions; and (iii) a Japanese/Korean banking consortium backed by the
23 Company.³⁵ In the report, Ripple stated that its "consistent and steadfast support of XRP is a major

24 ³² @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/941375649549246464>.

25 ³³ @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/944325730338357248>.

26 ³⁴ <https://twitter.com/bgarlinghouse/status/953676992313872384?lang=en>.

27 ³⁵ Q4 2017 XRP Markets Report, <https://ripple.com/insights/q4-2017-xrp-markets-report/>.

1 advantage as the payments industry continues to seriously consider it as an alternative liquidity
2 solution."³⁶ The centralized nature of XRP compared to other cryptocurrencies further cements the
3 central role of defendants in determining the future expected value of the asset.

4 38. Defendants' white papers, advertising and social media postings also conflate adoption
5 and use of Ripple's Enterprise Solutions businesses with adoption and use of XRP. Although ostensibly
6 separate, the two business segments are very much interrelated, because adoption of Ripple's Enterprise
7 Solutions by various institutional actors is likely to increase the use and demand for XRP. For example,
8 the Company's xRapid infrastructure solution uses XRP, which Ripple states will "dramatically lower
9 costs while enabling real-time payments in emerging markets."³⁷ Similarly, a November 2015 white
10 paper by the Company highlighted "XRP's Role on Ripple and in the Internet of Value" and how the
11 Company's technologies could turn a "Spark to a Wildfire" by increasing liquidity and efficiencies for
12 cross-border transactions for the Company's banking clients.³⁸ A February 2016 white paper followed
13 up on those purported "network effects," claiming that the use of the Ripple network and XRP would
14 increase banks' returns on investment by improving the global payment infrastructure.³⁹ Moreover,
15 Ripple promotes XRP and xRapid to its existing Enterprise Solutions customer base and can increase
16 the use of these products through cross-selling. Ripple has explicitly stated that this is part of its
17 business strategy.⁴⁰ As XRP can be used to transact on xRapid, and the same customers that may adopt
18 Ripple's Enterprise Solutions overlap with potential institutional users and facilitators of XRP, the
19 success of Ripple's overall business and operations is directly correlated to the price of XRP.

20
21 ³⁶ *Id.*

22 ³⁷ <https://ripple.com/solutions/source-liquidity/>.

23 ³⁸ https://ripple.com/files/ripple_vision.pdf.

24 ³⁹ https://ripple.com/files/xrp_cost_model_paper.pdf.

25 ⁴⁰ *E.g.*, <https://ripple.com/insights/much-ado-much-to-do-part-3/> ("While no xCurrent customers today
26 use xRapid, we're increasingly speaking to them about their liquidity challenges and xRapid at their
27 request.... As long as we continue to run xRapid pilots as successful as Cuallix's, we believe we'll drive
28 a lot of payments volume through XRP in the years ahead.").

39. Articles such as "Ripple XRP price picks up pace as demand for xVia API increases" have made the direct connection between the price of XRP and the adoption of the Company's Enterprise Solutions.⁴¹ Ripple itself has made this link, for example tweeting on May 16, 2017: "The appeal that Ripple has towards traditional financial institutions is a big advantage it has over Bitcoin."⁴²

40. Similarly, on June 29, 2017, Ripple tweeted a clip of an interview Garlinghouse gave on CNBC with the caption: "#XRP – up 4000% this year – has shown the market favors a real use case for #digitalassets..."⁴³ For that interview, Garlinghouse was quoted as stating, "Digital assets are in a position to be more valuable than gold."⁴⁴

41. On September 11, 2017, Garlinghouse stated in an interview with CNBC: "People are looking at the success Ripple has been having as a company, *and I think that's increased the value of XRP.*"⁴⁵ He continued by stating that Ripple wants "to keep focusing on making XRP a valuable payments tool, and that value will increase accordingly," and he was "voting with my . . . pocketbook on the future increased value of cryptocurrencies."⁴⁶

42. On November 27, 2017, Garlinghouse tweeted "Ripple & \$XRP are giving businesses 'what they want in a #blockchain,'" along with a link to a Motley Fool tweet.⁴⁷ The linked-to Motley Fool tweet stated that "AmEx and Banco Santander will use Ripple's blockchain network for instant intl. fund transfers. Could be a big deal for Ripple's XRP cryptocurrency. \$AXP \$SAN."⁴⁸

⁴¹ <https://globalcoinreport.com/ripple-xrp-price-picks-up-pace-as-demand-for-xvia-api-increases/>.

⁴² @Ripple, <https://twitter.com/Ripple/status/864635614020251649>.

⁴³ @Ripple, <https://twitter.com/Ripple/status/880532198025121793>.

⁴⁴ <https://twitter.com/AkikoFujita/status/880256389213339648>.

⁴⁵ <https://www.cnbc.com/2017/09/11/ripple-ceo-brad-garlinghouse-on-bitcoin-and-xrp.html>.

⁴⁶ *Id.*

⁴⁷ @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/935225940845711366>.

⁴⁸ @themotleyfool, <https://twitter.com/themotleyfool/status/934850515640471553>.

43. Likewise, on December 14, 2017, Ripple tweeted: "The Japan Bank Consortium launched a Ripple pilot with two large Korean banks – the first time money moves from Japan to Korea over RippleNet."⁴⁹ On that same day Ripple tweeted "@bgarlinghouse [its CEO's Twitter handle] on why crypto prices will be driven by real utility, the multi-trillion \$ problem @Ripple is solving and why \$XRP will come out on top."⁵⁰

44. On January 4, 2018, following XRP's rapid price increase, *The New York Times* published an article titled, "Rise of Bitcoin Competitor Ripple Creates Wealth to Rival Zuckerberg."⁵¹ The author of the article, Nathaniel Popper, tweeted a link to the article with the caption: "On the rise of Ripple. If this is a tulip fever, the fever has spread to chrysanthemums and poppies."⁵² He further stated in the tweet: "I've asked several people close to banks if banks are indeed planning to begin using Ripple's token, XRP, in a serious way, which is what investors seem to assume when they buy in at the current XRP prices."⁵³

45. Garlinghouse publicly responded to this post, tweeting: "Over the last few months I've spoken with ACTUAL banks and payment providers. They are indeed planning to use xRapid (our XRP liquidity product) in a serious way."⁵⁴ Garlinghouse then provided a "sampling" of feedback he had purportedly received from these institutions praising XRP and xRapid. This feedback implicitly justified the market price and investment opportunity for XRP, including:

- "We ran the costs on our end and see that this is 100% more efficient than [sic] what we're doing now."
- "The xRapid pilots all went perfectly."

⁴⁹ @Ripple, <https://twitter.com/Ripple/status/941501026267316224>.

⁵⁰ @Ripple, <https://twitter.com/Ripple/status/941352005058011137>.

⁵¹ Nathaniel Popper, *Rise of Bitcoin Competitor Ripple Creates Wealth to Rival Zuckerberg*, N.Y. Times, Jan. 4, 2018, <https://www.nytimes.com/2018/01/04/technology/bitcoin-ripple.html>.

⁵² @nathanielpopper, <https://twitter.com/bgarlinghouse/status/949129952716234752>.

⁵³ *Id.*

⁵⁴ *Id.*

- 1 • "This is much more efficient than our process today. We'd like to move forward with xRapid today."
- 2 • "We've already used Bitcoin in transactions but the time is causing slippage and costing more to transfer. We'd like to use xRapid and XRP to help with these issues."
- 3 • "This [XRP] is a much more efficient way to send money across borders than what we typically use today. Especially as Bitcoin has continued to slow and become more expensive."
- 4 • "There's plenty of small to medium sized banks out there that are hit hard by fees. They'd jump at the opportunity to send money directly and bypass those fees [using XRP]."⁵⁵

9 **Defendants Acknowledge that Development of the XRP Ledger Is Dependent on Their Technical, Entrepreneurial, and Managerial Efforts**

11 46. As alleged herein, defendants have repeatedly acknowledged the obvious: development of the XRP Ledger and the potential profits that could be derived from investing in XRP, depends on their technical, entrepreneurial and managerial efforts.

14 47. Indeed, Ripple publishes a quarterly report detailing its efforts to grow the "XRP ecosystem."⁵⁶ In the report for the second quarter of 2017, Ripple stated: "We plan to focus on three areas of liquidity development as we drive XRP towards its natural position as the digital asset standard for international value transfer."⁵⁷ The report continues: "Most importantly, we are accelerating the pace of our investment in the XRP Ledger to build on its speed, uptime, and scalability, to ensure XRP is the most trusted enterprise-grade digital asset."⁵⁸

20 48. Three months later, in describing its goals for the fourth quarter of 2017, Ripple proclaimed it would "continue to expand [its] xRapid partnerships."⁵⁹ The report stated that Ripple's

22 ⁵⁵ *Id.*

23 ⁵⁶ Announcing the Quarterly XRP Market Operations Report, <https://ripple.com/insights/announcing-quarterly-xrp-market-operations-report/>.

24 ⁵⁷ Q2 2017 XRP Markets Report, <https://ripple.com/insights/q2-2017-xrp-markets-report/>.

25 ⁵⁸ *Id.*

26 ⁵⁹ Q3 2017 XRP Markets Report, <https://ripple.com/xrp/q3-2017-xrp-markets-report/>.

1 "long-term goal is, and always has been, usage of XRP as a liquidity solution for more and more
2 corridors, and partnerships are key to achieving this goal."⁶⁰

3 49. Similarly, in January 2018, Ripple touted "a partnership with MoneyGram – one of the
4 world's largest money transfer companies – to use xRapid and XRP for near real-time cross-border
5 payments. In addition, there are a number of other xRapid deals at various stages of completion in the
6 pipeline."⁶¹ The Company also stated that it wanted "to build the necessary markets infrastructure for
7 eventual direct usage of XRP by financial institutions."⁶² Garlinghouse commented on this partnership,
8 stating "And to be clear: @MoneyGram announcement is one step in a marathon ahead to truly make
9 \$XRP the global liquidity solution for payment providers and banks."⁶³ These are illustrative of the
10 many instances in which defendants have acknowledged their own role in promoting the market for
11 XRP, and the ways in which the future expected value of XRP is dependent on their own efforts.

12 50. In addition, defendants, and Ripple in particular, are responsible for maintaining the
13 XRP Ledger. Unlike cryptocurrencies such as Bitcoin and Ethereum, which use a Proof of Work
14 ("PoW") consensus mechanism to verify the legitimacy of transactions on the network, the XRP Ledger
15 relies on trusted nodes, operated by Ripple, to verify the legitimacy of transactions and maintain
16 agreement on the network. The PoW mechanism utilized by Bitcoin and Ethereum helps to ensure the
17 network is decentralized by allowing anyone to use their own hardware and electricity to run the PoW
18 consensus algorithm to verify transactions on the public ledger, and send them to be recorded
19 throughout the blockchain. The network's decision-making process is thus placed entirely in the hands
20 of those who run the consensus algorithm, with their own hardware and electricity, rather than any one
21 entity or individual.

22 51. The XRP Ledger consensus protocol, by contrast, relies on "trusted nodes" on Ripple's
23 Unique Node Lists ("UNL"). The UNL is the set of trusted nodes that communicate "reliable"

24 ⁶⁰ *Id.*

25 ⁶¹ Q4 2017 XRP Markets Report, <https://ripple.com/insights/q4-2017-xrp-markets-report/>.

26 ⁶² *Id.*

27 ⁶³ @bgarlinghouse, <https://twitter.com/bgarlinghouse/status/951461582424358912>.

1 information to other nodes on the XRP Ledger. Like miners in Bitcoin and Ethereum, these "trusted
 2 nodes" validate transactions. However, unlike those miners, the trusted nodes are either selected, or
 3 controlled, by Ripple itself. Ripple provides its own default and recommended UNL – comprised of
 4 only five Ripple-hosted nodes. Although Ripple claims it plans to decentralize the network, it admits
 5 that it will only remove its own "trusted nodes" if it decides that other validator nodes are reliable,
 6 reputable, stable and secure.⁶⁴ Ripple's view of decentralization of the XRP Ledger still involves Ripple
 7 maintaining full control over the XRP Ledger, and deciding who owns and operates any third-party
 8 "trusted nodes."

9 52. In February 2018, BitMEX Research, a blockchain research group, installed and ran a
 10 copy of Rippled (the software that allows users to run nodes on the XRP Ledger).⁶⁵ According to
 11 BitMEX Research, "[t]he node operated by downloading a list of five public keys from the server
 12 v1.ripple.com."⁶⁶ The report continued: "The software indicates that four of the five keys are required
 13 to support a proposal in order for it to be accepted [on the XRP Ledger]."⁶⁷ However, "[a]ll five keys
 14 are assigned to Ripple.com."⁶⁸ BitMEX Research concluded that "[s]ince the keys were all downloaded
 15 from the Ripple.com server, *Ripple is essentially in complete control of moving the ledger forward*, so
 16 one could say *the system is centralized*."⁶⁹ As a result, BitMEX Research found that "the Ripple
 17 system appears for all practical purposes to be centralized and is therefore perhaps devoid of any
 18
 19

20 ⁶⁴ Rome Reginelli, *Decentralization Strategy Update* (Oct. 17, 2017), [https://ripple.com/dev-](https://ripple.com/dev-blog/decentralization-strategy-update/)
 21 [blog/decentralization-strategy-update/](https://ripple.com/dev-blog/decentralization-strategy-update/); Stephan Thomas, *How We Are Further Decentralizing the XRP*
 22 *Ledger to Bolster Robustness for Enterprise Use*, [https://ripple.com/insights/how-we-are-further-](https://ripple.com/insights/how-we-are-further-decentralizing-the-ripple-consensus-ledger-rel-to-bolster-robustness-for-enterprise-use/)
 23 [decentralizing-the-ripple-consensus-ledger-rel-to-bolster-robustness-for-enterprise-use/](https://ripple.com/insights/how-we-are-further-decentralizing-the-ripple-consensus-ledger-rel-to-bolster-robustness-for-enterprise-use/).

24 ⁶⁵ *The Ripple Story*, BitMEX Research (Feb. 6, 2018) <https://blog.bitmex.com/the-ripple-story/>.

25 ⁶⁶ *Id.*

26 ⁶⁷ *Id.*

27 ⁶⁸ *Id.*

28 ⁶⁹ *Id.*

1 interesting technical characteristics, such as censorship resistance, which coins like Bitcoin may
2 have."⁷⁰

3 53. Ripple's control over the XRP Ledger and the flow of XRP was put on dramatic display
4 in 2015, when it exerted this control to freeze the sale of approximately 96 million XRP, worth about \$1
5 million at the time, by Company co-founder McCaleb. Ripple received heavy criticism for the incident.
6 As noted by one cryptocurrency blog: "This incident is a reminder of the fact that despite its constant
7 portrayal as a semi-decentralized currency, there's a lot of control that can be exercised upon your XRP
8 by the company!"⁷¹

9 54. As additional indications of centralization and control over every XRP transaction,
10 Ripple is continuously updating the Ripple ecosystem. The implementation of gateway freezes, such as
11 the one used to freeze McCaleb's attempted XRP sale, is one example of an XRP system update by
12 Ripple, which the Company activated in August 2014.

13 55. Ripple's XRP product manager, Warren Paul Anderson ("Anderson"), frequently markets
14 the XRP Ledger's dependence on Ripple's continued commitment to it. For example, on December 14,
15 2016, he tweeted: "Thrilled to have the rippled team in town for a summit to discuss the future of
16 @Ripple Consensus Ledger & XRP as a native digital asset!"⁷² Approximately a year later, in
17 December 2017, he retweeted his earlier statement, saying "It's that time of year again, and what a year
18 it's been! #XRP Ledger (rippled) core developers in town @Ripple for a summit to discuss planning for
19 2018."⁷³ Later that same day, Anderson posted a picture of Ripple engineers with the caption: "A great
20 day of reflection & planning @Ripple w/ the greatest C++ engineering team in the world #XRP."⁷⁴ On
21

22
23 ⁷⁰ *Id.*

24 ⁷¹ <https://cryptocrimson.com/news/ripple-freezes-bitstamp-funds-co-founder>.

25 ⁷² @warpaul, <https://twitter.com/warpaul/status/809047284717469696>.

26 ⁷³ @warpaul, <https://twitter.com/warpaul/status/940970970759573505>.

27 ⁷⁴ @warpaul, <https://twitter.com/warpaul/status/941087297360994304>.
28

1 that same day, Ripple's head of cryptography tweeted: "Today, all the \$XRP Ledger developers at
2 @Ripple are in SF to reflect on 2017 and plan for 2018."⁷⁵

3 56. Later in the month, on December 29, 2017, a Ripple software engineer, Nik Bougalis
4 ("Bougalis"), tweeted: "I've been working on code review for the last couple days. Excited to get
5 rippled 0.90.0 out the door,"⁷⁶ indicating that Ripple was working to launch a new version of Rippled
6 and thereby advance the XRP Ledger. Following Ripple's release of a Rippled upgrade, Bougalis
7 tweeted: "The @Ripple C++ team has released rippled 0.90.0. Cool new features: history sharding,
8 deposit authorizations, checks and more!"⁷⁷

9 57. On March 5, 2018, Bougalis similarly reposted a tweet defending investing in XRP by
10 stating, "So you'd invest in Linux, not Microsoft. In UseNet, not Google. In MySQL, not Oracle. Good
11 luck with your portfolio. *Ripple is the next Google*. You're stuck in the silly idea that *a company can't*
12 *build a digital asset, even when it does this right under your nose*," with the caption: "Now that's a mic
13 drop, if I've ever seen one."⁷⁸ In other words, as acknowledged by Ripple's own employees, the value
14 of XRP is tied directly to the security's centralization in Ripple and the business, operations, success
15 and prospects of the Company.

16 **XRP Is a Security**

17 58. XRP, despite its name as a "token," is actually a security under California law. In
18 particular: (i) Ripple uses the funds it raised from the sale of XRP to fund its business ventures; (ii) the
19 Company indiscriminately offers XRP for sale to the public at large; (iii) plaintiff and the Class (as
20 defined herein) are effectively powerless to control the success of Ripple and XRP; and (iv) plaintiff
21 and the Class members' investment is substantially at risk, and is without any security.

22
23
24 ⁷⁵ @JoelKatz, <https://twitter.com/JoelKatz/status/940974743733153792>.

25 ⁷⁶ @nbougalis, <https://twitter.com/nbougalis/status/946829572145741824>.

26 ⁷⁷ @nbougalis, <https://twitter.com/nbougalis/status/966106932925882368>.

27 ⁷⁸ @nbougalis, <https://twitter.com/nbougalis/status/970733741319503872>.

59. Plaintiff and the Class invested in XRP as a common enterprise with the expectation of profits derived solely from the efforts of Ripple and its employees. Plaintiff and the Class used fiat and other digital currencies, such as Bitcoin and Ethereum, to purchase XRP. The expected profits and returns on these investments are directly intertwined with the business and operations of Ripple. Ripple acknowledges that it "sells XRP to fund its operations and promote the network. This allows Ripple Labs to have a spectacularly skilled team to develop and promote the Ripple protocol and network."⁷⁹ Similarly, Garlinghouse has conceded that Ripple's "self-interest is aligned with building and maintaining a healthy XRP market."

60. The success of XRP and the development of the XRP ecosystem is uniquely centralized in Ripple. The Company created the XRP Ledger and all 100 billion XRP in existence, and concedes that it "sells XRP to fund its operations and promote the network," in order "to have a spectacularly skilled team to develop[] and promote the Ripple protocol and network."⁸⁰ As of May 6, 2018, Ripple held over 60.8 billion XRP – more than 60% of the XRP in existence.⁸¹

61. In addition, Ripple directly influences the supply of XRP by locking more than half the supply of XRP in escrow to provide "supply predictability and trusted, healthy \$XRP markets."⁸² Ripple exercises near complete control over the XRP Ledger itself. As noted by BitMEX Research, "Ripple is essentially in complete control of moving the ledger forward, so one could say the system is centralized [sic]."⁸³ Ripple touts its control over the XRP Ledger as an advantage for XRP, contending that governance "may be where XRP most significantly distinguishes itself [from Bitcoin, Ethereum,

⁷⁹ Ripple credits, https://wiki.ripple.com/Ripple_credits#XRP_funds_the_development_and_promotion_of_the_protocol_and_the_network.

⁸⁰ *Id.*

⁸¹ Market Performance, <https://ripple.com/xrp/market-performance/> (last visited May 23, 2018).

⁸² Q4 2017 XRP Markets Reports, <https://twitter.com/bgarlinghouse/status/938933791145336832?lang=en>.

⁸³ *The Ripple Story*, BitMEX Research (Feb. 6, 2018), <https://blog.bitmex.com/the-ripple-story/>.

1 and Litecoin] going forward."⁸⁴ Similarly, it has stated that "[b]uilding pivotal infrastructure on top of
2 technology that does not have clear governance is not palatable for large established companies."⁸⁵

3 62. Defendants themselves have recognized that XRP investors have a reasonable
4 expectation of profits derived from defendants' efforts to improve the XRP ecosystem, and have
5 publicly touted XRP's price performance on numerous occasions, as detailed herein. Ripple's website
6 even contains an "XRP Buying Guide" that provides links to exchanges and instructions on "How to
7 Buy XRP" on those exchanges.⁸⁶ Furthermore, Ripple has taken steps to promote XRP in an attempt to
8 increase the token's price or to justify its price appreciation, and the Company has issued a white paper
9 touting XRP's purported "ROI." Garlinghouse and other Ripple employees have publicly stated that
10 they are bullish investors on XRP.

11 63. Similarly, Ripple and its CEO have acknowledged that the value of XRP will be driven
12 by the XRP Ledger's usefulness in solving cross-border payments and its adoption by institutions.
13 Defendants have similarly touted adoption of Ripple's Enterprise Solutions, which are directly
14 correlated with the use case and likely value of XRP. In addition, defendants have pooled XRP
15 investments to fund projects to promote the XRP Ledger and interledger protocol, thereby increasing
16 the value of the XRP Ledger and XRP. For example, on April 11, 2018, Ripple announced that it had
17 "invested \$25 million in XRP to Blockchain Capital Parallel IV, LP," to "support and develop
18 additional [XRP] use cases beyond payments."⁸⁷ Ripple's Senior Vice President of Business
19 Development promoted this investment, tweeting: "Ripple's \$25 million investment in
20
21
22

23 ⁸⁴ Q4 2017 XRP Markets Report, <https://ripple.com/insights/q4-2017-xrp-markets-report/>.

24 ⁸⁵ *Id.*

25 ⁸⁶ XRP Buying Guide, <https://ripple.com/xrp/buy-xrp/>.

26 ⁸⁷ *Ripple Invests \$25 Million to Drive Innovation in Blockchain and Digital Assets*,
27 [https://ripple.com/insights/ripple-invests-25-million-to-drive-innovation-in-blockchain-and-digital-](https://ripple.com/insights/ripple-invests-25-million-to-drive-innovation-in-blockchain-and-digital-assets/)
28 [assets/](https://ripple.com/insights/ripple-invests-25-million-to-drive-innovation-in-blockchain-and-digital-assets/).

1 @blockchaincap's new fund is the first and not the last contribution to ventures that further develop the
2 #blockchain and \$XRP ecosystems."⁸⁸

3 64. Plaintiff and the Class have entirely passive roles vis-à-vis the success of the XRP
4 Ledger and XRP. Rather, as defendants' own marketing makes clear, the profits reasonably expected to
5 be derived from investing in XRP are solely dependent on the technical, entrepreneurial, and managerial
6 efforts of defendants and their agents and employees. Plaintiff and the Class reasonably expected
7 defendants to provide significant managerial efforts, to develop and improve the XRP Ledger, to
8 develop and sustain a supportive network, and to secure exchanges through which XRP can be
9 exchanged. Defendants repeatedly represented that they would provide significant managerial efforts to
10 achieve these objectives and make the XRP ecosystem a success. The purchase of XRP is thus an
11 investment in a common enterprise, with an expectation of profits, solely from the efforts of defendants
12 and their affiliates.

13 **Recent SEC Guidance Undermines Ripple's Denials**

14 65. Ripple has long claimed that XRP is not a security. As recently as April 12, 2018,
15 Ripple's Chief Marketing Strategist told *CNBC* in an interview: "We absolutely are not a security. We
16 don't meet the standards for what a security is based on the history of court law."⁸⁹ Instead, Ripple
17 claims that XRP is a commodity, such as gold. Purchasers of XRP did not have any reason to challenge
18 these contentions from the Company, given the unclear state of regulation and quickly evolving and
19 uncharted landscape of blockchain technologies. This state of affairs has only recently changed, as
20 regulators have begun to provide clarifying guidance that undermines defendants' denials, and the
21 centralized nature of XRP in Ripple has become more apparent.

22 66. In July 2017, U.S. Securities and Exchange Commission ("SEC") began to question the
23 legality of unregistered token sales, such as the sales of XRP, and made clear that sellers of unregistered
24 securities cannot evade their obligations under the federal securities laws by elevating form over

25 ⁸⁸ @patgriffin9, <https://twitter.com/Ripple/status/984061347078987776>.

26 ⁸⁹ Kate Rooney, *Ripple says its cryptocurrency XRP is not a security*, *CNBC* (Apr. 12, 2018),
27 <https://www.cnbc.com/2018/04/12/ripple-says-its-cryptocurrency-xrp-is-not-a-security.html>.

1 substance. On July 23, 2017, the SEC issued an "Investor Alert," which stated that the agency was
 2 "concerned that the rising use of virtual currencies in the global marketplace may entice fraudsters to
 3 lure investors into Ponzi and other schemes in which these currencies are used to facilitate fraudulent,
 4 or simply fabricated, investments or transactions."⁹⁰ The release warned that "the fraud may also
 5 involve an unregistered offering or trading platform" and promises of "high returns for getting in on the
 6 ground floor of a growing Internet phenomenon."⁹¹

7 67. On July 25, 2017, the SEC released an "Investor Bulletin" on ICOs. The bulletin stated
 8 that digital blockchain currencies "may be securities" under the facts and circumstances, and that such
 9 "virtual coins or tokens in an ICO *are subject to the federal securities laws*."⁹² The release continued
 10 in pertinent part:

11 A virtual currency is a digital representation of value that can be digitally traded and
 12 functions as a medium of exchange, unit of account, or store of value. Virtual tokens
 13 or coins may represent other rights as well. Accordingly, in certain cases, *the tokens*
 14 *or coins will be securities and may not be lawfully sold without registration with*
the SEC or pursuant to an exemption from registration.

15 68. That same day, the SEC issued an investigative report concluding that the tokens issued
 16 by a blockchain and distributed ledger organization known as "The Dao" were, in fact, securities. The
 17 press release announcing the report stated that, "issuers of distributed ledger or blockchain technology-
 18 based securities *must register offers and sales of such securities unless a valid exemption applies*" and
 19 that those organizing unregistered offerings "may be liable for violations of the federal securities
 20 laws."⁹³ In the case of The Dao, the SEC found that even though the organization labeled its tokens as
 21

22
 23 ⁹⁰ *Investor Alert: Ponzi Schemes Using Virtual Currencies*, https://www.sec.gov/investor/alerts/ia_virtualcurrencies.pdf.

24 ⁹¹ *Id.*

25 ⁹² *See Investor Bulletin: Initial Coin Offerings*, https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_coinofferings.
 26

27 ⁹³ *See SEC Issues Investigative Report Concluding DAO Tokens a Digital Asset, Were Securities*,
 28 <https://www.sec.gov/news/press-release/2017-131>.

1 something other than securities, the virtual currency was subject to the registration requirements of the
2 federal securities laws as, in economic substance, it was a security.

3 69. On December 11, 2017, SEC Chairman Jay Clayton ("Clayton") issued another
4 statement on digital tokens. He confirmed that "[m]erely calling a token a 'utility' token or structuring it
5 to provide some utility does not prevent the token from being a security," and warned security offerors
6 that attempts to "elevate form over substance" could not obviate their obligations under the federal
7 securities laws.⁹⁴ Clayton continued in pertinent part:

8 *[C]ertain market professionals have attempted to highlight utility characteristics of*
9 *their proposed initial coin offerings in an effort to claim that their proposed tokens*
10 *or coins are not securities. Many of these assertions appear to elevate form over*
11 *substance. Merely calling a token a "utility" token or structuring it to provide*
12 *some utility does not prevent the token from being a security. Tokens and offerings*
13 *that incorporate features and marketing efforts that emphasize the potential for*
14 *profits based on the entrepreneurial or managerial efforts of others continue to*
15 *contain the hallmarks of a security under U.S. law. On this and other points where*
16 *the application of expertise and judgment is expected, I believe that gatekeepers and*
17 *others, including securities lawyers, accountants and consultants, need to focus on*
18 *their responsibilities. I urge you to be guided by the principal motivation for our*
19 *registration, offering process and disclosure requirements: investor protection and, in*
20 *particular, the protection of our Main Street investors.*

21 * * *

22 [M]any token offerings appear to have gone beyond this construct and are more
23 analogous to interests in a yet-to-be-built publishing house with the authors, books
24 and distribution networks all to come. *It is especially troubling when the promoters*
25 *of these offerings emphasize the secondary market trading potential of these*
26 *tokens. Prospective purchasers are being sold on the potential for tokens to*
27 *increase in value – with the ability to lock in those increases by reselling the tokens*
28 *on a secondary market – or to otherwise profit from the tokens based on the efforts*
of others. These are key hallmarks of a security and a securities offering.

By and large, the structures of initial coin offerings that I have seen promoted
involve the offer and sale of securities and directly implicate the securities
registration requirements and other investor protection provisions of our federal
securities laws. Generally speaking, these laws provide that investors deserve to
know what they are investing in and the relevant risks involved.

70. Clayton could have been referring directly to Ripple and defendants' attempts to tout the
profit-making potential of investing in XRP tokens on the one hand, while disclaiming any

⁹⁴ See Jay Clayton, *Statement on Cryptocurrencies and Initial Coin Offerings*, SEC (Dec. 11, 2017).

responsibilities to comply with applicable securities laws on the other. The SEC has since launched dozens of investigations into cryptocurrency startups.

71. For the integrity of the U.S. securities markets, defendants' attempts to circumvent important investor safeguards must fail. Although cryptocurrencies represent something of a new investing frontier, the old adage rings true: "If it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck." Here, XRP has all of the hallmarks of a security, and defendants' denial does nothing to diminish their obligations to register these securities under applicable securities laws.

72. In light of recent SEC statements, there can now be little doubt that XRP tokens constitute securities. Despite this fact, defendants have failed to register the securities in accordance with applicable laws and regulations, before offering and selling them to the investing public. Further, the sale of XRP was not subject to any exemption or exceptions to the registration requirements available under state or federal law. As a result, the offer and sale of XRP was unlawful, and defendants are liable to plaintiff and the Class as purchasers of XRP as alleged herein.

CLASS ACTION ALLEGATIONS

73. Plaintiff brings this action as a class action pursuant to §382 of the California Code of Civil Procedure on behalf of a class consisting of all citizens of California who purchased XRP (the "Class"). Excluded from the Class are defendants and their families, the officers, directors and affiliates of the defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which defendants have or had a controlling interest.

74. The members of the Class are so numerous that joinder of all members is impracticable. Hundreds of millions of XRP have been sold by defendants. While the exact number of Class members are unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of members in the proposed Class.

75. Plaintiff's claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

1 76. Plaintiff will fairly and adequately protect the interests of the members of the Class and
 2 has retained counsel, who is competent and experienced in class and securities litigation.

3 77. Common questions of law and fact exist as to all members of the Class and predominate
 4 over any questions solely affecting individual members of the Class. Among the questions of law and
 5 fact common to the Class are:

- 6 (a) whether defendants violated the Corporations Code;
- 7 (b) whether XRP are securities;
- 8 (c) whether XRP were required to be registered under applicable laws;
- 9 (d) whether plaintiff and the Class are entitled to rescind their purchases of XRP; and
- 10 (e) to what extent the members of the Class have sustained damages and the proper
 11 measure of damages.

12 78. A class action is superior to all other available methods for the fair and efficient
 13 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
 14 damages suffered by individual Class members may be relatively small, the expense and burden of
 15 individual litigation make it impossible for members of the Class to individually redress the wrongs
 16 done to them. There will be no difficulty in the management of this action as a class action.

17 **FIRST CAUSE OF ACTION**

18 **For Violation of §§25110 and 25503 of the Corporations Code** 19 **Against All Defendants**

20 79. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

21 80. This Cause of Action is brought pursuant to §§25110 and 25503 of the Corporations
 22 Code against all defendants.

23 81. As detailed herein, XRP is a security.

24 82. Defendants failed to qualify XRP with the Commissioner of Corporations and XRP did
 25 not qualify for an exemption from registration.

26 83. Defendants sold XRP to plaintiff and the Class, in violation of §25110, which makes it "
 27 unlawful for any person to offer or sell in this state any security in an issuer transaction ... unless such
 28

1 sale has been qualified ... or unless such security or transaction is exempted or not subject to
2 qualification."

3 84. As such, Garlinghouse and Ripple have participated in the unlawful sale of securities in
4 violation of the Corporations Code, and are liable to plaintiff and the Class for rescission and/or
5 compensatory damages under §25503.

6 **SECOND CAUSE OF ACTION**

7 **For Violation of §25504 of the Corporations Code**
8 **Against Ripple and Garlinghouse**

9 85. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

10 86. This Cause of Action is brought pursuant to §25504 of the Corporations Code against
11 Ripple and Garlinghouse.

12 87. Due to his position within the Company and role, vis-à-vis, the XRP Ledger, ownership
13 interest in and control over Ripple, Garlinghouse acted as a controlling person of Ripple and XRP II
14 within the meaning of §25504 of the Corporations Code as alleged herein. By virtue of his position as
15 CEO and his participation in and/or awareness of Ripple's operations, Garlinghouse had the power to
16 influence and control, and did influence and control, directly or indirectly, the decision-making, relating
17 to the sale of XRP and the failure to register these sales.

18 88. Ripple controlled XRP II, as the parent of XRP II, and the various actors responsible for
19 the advancement of the XRP ecosystem. In addition, Ripple controlled Garlinghouse and all of his
20 employees.

21 89. Ripple and Garlinghouse also controlled the flow of XRP, the advancement of the XRP
22 Ledger, and the means by which transactions in XRP and the offer and sale of XRP occurred, including
23 their ability to freeze XRP accounts and control the flow of XRP through various exchanges and the
24 other indications of control alleged herein. By virtue of their own acts, and their positions of control
25 and influence, Ripple and Garlinghouse materially aided in the acts and transactions constituting the
26 violations alleged herein.

27 90. By virtue of the foregoing, defendants are liable to plaintiff and the Class as secondary
28 actors under §25504 of the Corporations Code.

91. As such, Garlinghouse and Ripple have participated in an unregistered sale of securities in violation of the Corporations Code, and are liable to plaintiff and the Class for rescission and/or compensatory damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action and certifying plaintiff as a class representative and plaintiff's counsel as Lead Counsel;

B. Declaring that XRP is a security and that defendants' unregistered sales of XRP violated applicable law;

C. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

D. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

E. Awarding rescission or a rescissionary measure of damages; and

F. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

Dated: June 27, 2018

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
STEPHEN J. ODDO
ERIC M. CARRINO


BRIAN J. ROBBINS

600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991
E-mail: brobbs@robbinsarroyo.com
sodd@robbinsarroyo.com
ecarrino@robbinsarroyo.com

Attorneys for Plaintiff

1275287